

## **910 KAR 2:040. Service provisions for adult guardianship.**

RELATES TO: KRS 17.500 - 17.540, 202A, 202B, 209.990, 210.290(3), (4), 367.97501, 367.97524, 367.97527, 387.500-387.990, 389A.010, 389.015, 20 C.F.R. 416.212, 42 U.S.C. 1382(e)(1)(G)

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. This administrative regulation establishes service provisions for adult guardianship.

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020(4).

(2) "Best interest" means a course of action that maximizes what is best for a ward and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of a ward.

(3) "Conservator" is defined by KRS 387.510(1).

(4) "Court" means a court of competent jurisdiction.

(5) "DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(6) "Department" or "DAIL" means the Department for Aging and Independent Living.

(7) "Division" means the Division of Guardianship.

(8) "Fiduciary Services Branch" means a central office branch under the Division of Operations and Support.

(9) "Field Services Branch" means a central office branch under the Division of Guardianship.

(10) "Guardian" is defined by KRS 387.510(3).

(11) "Guardian ad Litem" means a guardian appointed to represent the interests of a person with respect to a single action in litigation.

(12) "Guardianship advisory committee" means a review panel of at least two (2) cabinet medical directors to review records to assist in decision making regarding end of life decisions.

(13) "Informed consent" means a person's agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently.

(14) "Interested party" is defined by KRS 387.860(5).

(15) "Least restrictive alternatives" means the guardianship options that have been exhausted such as:

- (a) Power of attorney;
- (b) Living wills;
- (c) Advanced directives;
- (d) Case management;
- (e) Representative payee;
- (f) Curator;
- (g) Trustee;
- (h) Health care surrogate;
- (i) Ex-parte order;
- (j) Emergency protective services;
- (k) Adult protective ongoing services; or
- (l) Informal network of support.

(16) "Limited conservator" is defined by KRS 387.510(2).

(17) "Limited guardian" is defined by KRS 387.510(4).

(18) "Nurse consultant" means a nurse consultant, inspector employed by the Cabinet for Health and Family Services.

(19) "Provider" means a facility or entity providing services for a ward such as:

- (a) Self;
- (b) Caretaker;
- (c) Relative;
- (d) Group home placement;
- (e) Hospital;
- (f) Psychiatric hospital;
- (g) Personal care home; or
- (h) Supports for Community Living facility.

(20) "Quit claim deed" means a document by which an individual disclaims an interest in a piece of real property and passes that claim to another person.

(21) "Substituted judgment" means principle of decision-making made by the Field Services Branch which comports with the individual ward or beneficiary's known wishes expressed prior to the appointment of a guardian, if the individual was once capable of developing views relevant to the matter at issue and reliable evidence of these views remains.

(22) "Successor guardian" means an individual, agency, or corporation who is appointed to succeed a current guardian removed by the court.

(23) "Ward" is defined by KRS 387.510(15).

Section 2. Annual Court Report. (1) Within thirty (30) calendar days of the anniversary date of the guardianship appointment, the Field Services Branch shall submit to the court an annual report on the ward's personal status.

(2) In order to complete the annual report the Field Services Branch shall:

- (a) Visit the ward and use an Initial Field Visit Report to assess current physical condition and needs;
- (b) Review the ward's records at the ward's place of residence;
- (c) Consult with the provider concerning the ward's care;
- (d) Verify the names, addresses, and telephone numbers of the ward's relatives; and
- (e) Verify with Fiduciary Services Branch the ward's burial arrangements in accordance with 910 KAR 2:030, Section 12.

(3) The Field Services Branch shall:

- (a) Review, sign, and notarize an annual report; and
- (b) Maintain a scheduling system that ensures the timely filing of annual reports in court for each guardianship ward.

Section 3. Renewal of Limited Appointments. (1) A limited guardian or limited conservator shall not be appointed for more than five (5) years pursuant to KRS 387.590(7).

(2) The Field Services Branch shall be responsible for initiating procedures for continued guardianship or conservatorship, if appropriate.

(3) To make this determination, the Field Services Branch shall review the last annual court report to determine if continued guardianship was recommended.

(4) The Field Services Branch shall secure a verified affidavit from a physician, psychiatrist, or social worker, not serving in the division, verifying the ward's petition to continue guardianship.

(5) At least sixty (60) calendar days prior to the date of the expiration of the limited guardianship, the Field Services Branch shall file with the court the following:

- (a) Petition for Relief Modification or Termination (AOC-795) issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov);
  - (b) Application for Appointment for Fiduciary (AOC-745) issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov); and
  - (c) A verified affidavit as specified in subsection (4) of this section.
- (6) If the request for modification involves the removal of additional rights, the Field Services Branch shall request a jury trial.
- (7) If required by the court, the Field Services Branch shall attend the renewal hearing and testify.
- (8) Once a court order is issued, the Field Services Branch shall obtain a copy of the court documents.

Section 4. Restoration or Modification of Rights. (1) The Field Services Branch shall inform the ward of the restoration or modification of rights process.

(2) If a ward requests the restoration of his or her rights, the Field Services Branch shall assess and assist the ward's request.

(3) The Field Services Branch shall complete an assessment of the ward using the Initial Field Visit Report that includes:

- (a) Community supports available to assist the ward;
- (b) Less restrictive interventions that are available to the ward;
- (c) Improvements in the ward's ability to manage personal or financial affairs;
- (d) Risks and benefits of restoration or modification of rights; and
- (e) A recommendation of what rights could be appropriately restored, including voting rights.

(4) If the assessment supports restoration or modification, the Field Services Branch shall assist the ward in preparation of the Petition for Relief Modification or Termination (AOC-795), issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov), for submittal to the court.

(5) If the assessment does not support restoration or modification, the Field Services Branch shall advise the ward or other interested party after the assessment is complete that he or she may call or write the court to request restoration.

(6) If it is in the ward's best interest, the Field Services Branch shall work with the ward towards the goal of restoration or modification by developing a plan and setting attainable and measurable goals.

(7) The Field Services Branch shall involve community partners in formulating the plan to ensure focus on comprehensive services.

(8) The Field Services Branch shall agree on a time frame for evaluating the ward's progress.

(9) If the ward has some rights restored and the cabinet's appointment is modified, the Field Services Branch shall:

- (a) Obtain a copy of the cabinet's new appointment; and
- (b) Email notification of the change to the Fiduciary Services Branch.

(10) If the ward's rights are restored and the cabinet no longer serves in any capacity, the Field Services Branch shall:

- (a) Obtain a copy of the court order indicating restoration;
- (b) Notify Fiduciary Services Branch by email of the resignation and the mailing address of the ward;
- (c) Review the ward's records and hard copy file to determine if any original information or documentation should be sent to the Fiduciary Services Branch and, if so, forward the same to the Fiduciary Services Branch within ten (10) working days of the review;

- (d) Inform the restored ward about procedures to apply for benefits; and
- (e) Direct the restored ward to the Fiduciary Services Branch regarding additional financial questions.

Section 5. Securing Successor Guardian or Conservator. (1) The Field Services Branch shall advise or assist an interested party, if appropriate.

(2) The Field Services Branch shall discuss with the interested party:

(a) The possibility of he or she becoming guardian; and

(b) The following information:

1. Prior history and involvement of the interested party;
2. Willingness of the interested party to assist the ward; and
3. A criminal background check on the interested party with the county attorney.

(3) If the Field Services Branch determines the appointment of the interested party as successor guardian or conservator is in the best interest of the ward, the Field Services Branch shall assist the interested party with the completion and filing of:

(a) The Petition for Relief, Modification or Termination (AOC-795) issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov); and

(b) An Application for Appointment for Fiduciary (AOC-745) issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov), with the court.

(4) The Field Services Branch shall submit to the court a letter supporting appointment of the applicant for successor guardian or conservator.

(5) If the Field Services Branch does not agree that successor guardian or conservator appointment is in the best interest of the ward, the Field Services Branch shall:

(a) Advise the interested party that he or she may contact the court and make appropriate application; and

(b) Submit a letter to the court specifying the concerns regarding the application of appointment for successor guardian or conservator.

(6) The Field Services Branch shall be available to testify at the hearing to determine if a successor guardian or conservator is appointed by the court.

(7) If a successor guardian or conservator is appointed and the cabinet retains no responsibility, the Field Services Branch shall:

(a) Obtain a copy of the court order showing change in guardianship and verification that bond has been posted if surety has been ordered by the court;

(b) Notify Fiduciary Services Branch by email of the resignation;

(c) 1. Review the ward's records and hard copy file to determine if any original information or documentation should be sent to Fiduciary Services Branch for submission to the successor guardian or conservator; and

2. If so, forward the information or documentation to the Fiduciary Services Branch within ten (10) working days of the review;

(d) Inform the successor guardian or conservator about procedures to apply for benefits; and

(e) Direct the successor guardian or conservator to the Fiduciary Services Branch regarding additional financial questions.

(8) If the successor guardian or conservator is appointed in some capacity and the cabinet retains some level of responsibility, the Field Services Branch shall:

(a) Obtain a copy of the court order showing the change in guardianship and verification that bond has been posted if surety was required by the court;

(b) Notify the Fiduciary Services Branch by email of the change in the cabinet's responsibility;

- (c) Inform the successor guardian or conservator about procedures to apply for relevant benefits; and
- (d) Direct the successor guardian or conservator to the Fiduciary Services Branch regarding financial questions.

Section 6. Sale of Real of Estate. (1) If a ward of the cabinet has real property, the Field Services Branch and the Fiduciary Services Branch staff shall explore options for management of property and determine what is in the best interest of the ward.

(2) Information concerning the property valuation for tax purposes, the real estate or personal property, or offers to purchase the ward's property shall only be disclosed to the following authorized persons:

(a) Other staff employed by the cabinet's division such as:

- 1. Office of the Inspector General (OIG);
- 2. Office of Legal Services (OLS);
- 3. Ombudsman;
- 4. Adult Protective Services (APS); or
- 5. Child Protective Services (CPS);

(b) The insurance agent or claims representative of the insurance company that wrote the insurance policy on the property;

(c) The real estate agent and attorney with a provider agreement to manage property and legal matters for the service region; or

(d) The Guardian ad Litem appointed for the sale of the ward's property.

(3) If disposing of the ward's assets, the Field Services Branch shall make a reasonable effort to preserve the estate as designated in a ward's will or other estate planning devices executed by a ward prior to the finding of disability in accordance with KRS 387.700(1).

(4) The Field Services Branch shall review court appointment papers to ensure that the cabinet has the authority to handle real estate and personal property matters.

(5) If necessary, or if mandated by the court, the Field Services Branch shall secure an independent appraisal of real and personal property.

(6) The Field Services Branch shall secure an attorney to handle the sale of property pursuant to KRS 389A.010 and 389A.015.

(7)(a) The Field Services Branch shall ensure the cabinet only passes title by means of a Quit Claim Deed on behalf of the ward.

(b) A Quit Claim Deed passes only the interest held by the ward.

(c) Warranties shall not be expressed in a Quit Claim Deed.

(8) The Field Services Branch shall determine if a relative or other interested party is interested in purchasing real property and, if so, offer the property appraised by a realtor to the relative or other interested party.

(9) If the division determines it is in the ward's best interest to sell real and personal property, a public forum for sale shall include a:

- (a) Public auction;
- (b) Dealer consignment;
- (c) Yard sale; or
- (d) Realtor.

(10) The Field Services Branch shall dispose of remaining items that did not sell, if applicable, through donation.

(11) The Field Services Branch shall seek eviction through the court if a person residing in the ward's property:

- (a) Refuses to vacate the property;

- (b) Is not paying rent; or
- (c) Is causing damage to the property.

(12) The Field Services Branch shall attend a closing on the ward's real property and shall sign documents such as a:

- (a) Quit Claim Deed;
- (b) Settlement Statement; or
- (c) Tax form.

Section 7. Guardianship Ongoing Service Provision. (1) The Field Services Branch:

(a) Shall have someone on call twenty-four (24) hours a day; and

(b) May have duties such as:

1. Managing assets, that may include managing or liquidating real and personal property;
2. Securing and giving consent for social services, medical services, and living arrangements; or
3. Securing and granting permission for other needed support services necessary for the well-being of the ward.

(2) Pursuant to KRS 387.640(1), the cabinet as guardian shall have the general duty to assure that the personal, civil, and human rights of the ward are preserved and protected.

Section 8. Decision Making on Behalf of a Ward. (1) A decision made on behalf of a ward by the Field Services Branch shall be based on the principles of:

- (a) Informed consent;
- (b) Substituted judgment;
- (c) Best interest; or
- (d) Least restrictive alternative.

(2) The Field Services Branch shall use the following guidelines if making a decision on behalf of a ward:

- (a) The exact request of the ward;
  - (b) Conditions identified necessitating action;
  - (c) Identify and determine alternatives that best meets the individual needs of the ward while placing the least restrictions on the ward's:
    1. Freedom;
    2. Rights; and
    3. Ability to control the ward's own environment;
  - (d) Based on available information, determine whether the ward has previously stated preferences prior to the cabinet being made the ward's guardian;
  - (e) Communication of decisions with the ward;
  - (f) A determination of risks and benefits:
    1. While balancing the ward's maximum self-determination; and
    2. Maintaining the safety of the ward; and
  - (g) Directions from the court.
- (3) The Field Services Branch shall make each decision by an informed decision based on the principle of informed consent.
- (4) The Field Services Branch shall not use substituted judgment if:
- (a) Following the ward's wishes causes substantial harm to the ward; or
  - (b) The Field Services Branch is unable to establish the ward's prior wishes.
- (5) The Field Services Branch shall consider the least intrusive, best interest, and least restrictive alternative course of action possible to provide for the needs of the ward.

Section 9. Visiting the Ward at the Current Residence. (1) The Field Services Branch shall visit the ward at least every ninety (90) days with a minimum of two (2) visits being in the home environment annually to:

- (a) Assess the suitability of the placement and ascertain a ward's needs;
- (b) Consult with facility personnel regarding the cabinet's expectations; and
- (c) Participate in the ward's care plan.

(2) If the Field Services Branch visits a facility and concerns are identified, and if the issue does not require intervention by regulatory or certifying agencies, the Field Services Branch shall:

- (a) Bring it to the attention of the facility's administrator or designee; and
- (b) Develop an agreement for corrective action with the facility administrator.

(3) If the issue is a regulatory issue related to health or safety, the Field Services Branch shall report immediately to the appropriate regulatory or certifying agency such as:

- (a) OIG;
- (b) DBHDID; or
- (c) The department.

(4) The Field Services Branch shall report known or suspected incidents of abuse, neglect, or exploitation to:

- (a) The Department for Community Based Services (DCBS) office;
- (b) The Division of Protection and Advocacy (P&A) if the Field Services Branch is aware the ward is a client of the P&A; or
- (c) Other appropriate state agency.

(5) The designated Field Services Branch shall complete the following duties:

- (a) Explain reporting requirements to the ward;
- (b) Explain the investigative process of abuse, neglect, or exploitation that will ensue; and
- (c) Offer the alleged victim appropriate assistance or referral as specified in subsection (4) of this section.

Section 10. Out of State Travel. (1) If a request is made for a ward to travel out of the state of Kentucky, the Field Services Branch shall consider the following:

- (a) Risk of or prior Absence Without Leave (AWOL);
- (b) Medical issues of the ward that may require attention while out of state; and
- (c) The ward's physical ability to handle the trip.

(2) The Field Services Branch shall inform the provider of the provider's financial responsibility for any emergency medical treatment not covered by the ward's medical insurance or Kentucky Medicaid from the time the ward leaves the state of Kentucky until the ward is once again within the legal boundaries of the Commonwealth of Kentucky.

(3) The Field Services Branch shall request a signed memorandum or letter from the provider detailing the following information:

- (a) The potential for AWOL risk and if measures will be taken to lessen the risk;
- (b) Acceptance of the involved responsibilities of the ward; and
- (c) Proposed dates of travel.

(4) If the Field Services Branch determines that the provider has been responsible and agrees travel is in the best interest of the ward, the Field Services Branch shall share all necessary emergency contact numbers with the provider and request the provider to:

- (a) Make contact upon return to the state of Kentucky; and
- (b) Carry a copy of the current court order appointing the cabinet as guardian in case of an emergency.

Section 11. Signing Documents on Behalf of a Ward or Reports to Courts. (1) The Field Services Branch shall review facility contracts to ensure a ward's rights are preserved.

(2) The division shall not sign a contract for arbitration on behalf of a ward.

(3) A division employee shall use proper signature designation as follows:

(a) If signing on behalf of a ward, the wording shall be name of ward by name of cabinet guardianship employee on behalf of the cabinet as court appointed (type of appointment) for name of ward; or

(b) If signing a court document on behalf of the cabinet, the wording shall be name of guardianship employee on behalf of the Cabinet for Health and Family Services as court appointed (type of appointment) for name of ward.

(4) A division employee shall use the term:

(a) Conservator or limited conservator if the cabinet has been appointed for the sole purpose of performing the duties of a full or limited conservatorship; or

(b) Guardian or limited guardian in all other designations or combinations thereof.

Section 12. Client Placement and Movement. (1) To ensure a ward is receiving the least restrictive and highest quality services from the most appropriate provider, the Field Services Branch shall develop and maintain a working knowledge of:

(a) Services;

(b) Providers; and

(c) Facilities in the community.

(2) The Field Services Branch shall consider various ancillary and support services and select a provider that best meets the needs of the individual ward.

(3) If the cabinet has responsibility for living arrangements of the ward, the Field Services Branch shall ensure that the ward is living in the most appropriate, least restrictive environment taking into consideration the ward's wishes and needs.

(4) A move to a new environment, including an intensive care facility for intellectual disabilities, nursing facility, or psychiatric hospital, may only be made after the Field Services Branch:

(a) Evaluates physical and mental health needs by reviewing recommendations of treating professionals; and

(b) Determines care options.

(5) The Field Services Branch shall, upon the move to a new environment:

(a) Attend an initial care plan meeting; and

(b) Visit the ward:

1. Within thirty (30) days of the move; and

2. Within ninety (90) days of the move for a follow-up visit.

(6) The Field Services Branch shall consider:

(a) Any involuntary or long-term institutional placement of a ward to:

1. Minimize the risk of substantial harm to the ward; and

2. Obtain the most appropriate care; and

(b) The ward benefits and entitlements driven by level of care in the placement.

(7) The Field Services Branch shall notify the facility where the ward resides if the ward is listed on the Sex Offender Registry, has committed a sex crime or a crime against a minor, or is otherwise required to be on the registry pursuant to KRS 17.500 through 17.540.

Section 13. Supports for Community Living (SCL). (1) Unless a ward has been previously referred, the Field Services Branch shall refer a ward with an intellectual disability or developmental disability to DBHDID for determination of Supports for Community Living (SCL) services in accordance with 907 KAR 1:145.



(2) The division shall monitor and access care in which a ward receives through SCL services.

Section 14. Bed Holds. (1) If the Field Services Branch receives notification that a ward is leaving a Medicaid nursing level of care or Medicaid Waiver program or has left a facility or placement, the Field Services Branch may:

(a) Give verbal authorization for the bed to be reserved; and

(b) Authorize bed hold days in excess of the period covered by Medicaid, or other funding source, only if the availability of the ward's funds has been verified with the Fiduciary Services Branch.

(2) If authorizing a bed hold, the Field Services Branch shall:

(a) Verify the verbal authorization of a bed hold with:

1. The facility holding the bed; and

2. Written verification including the:

a. Client's name;

b. Date phone call was placed;

c. Date reservation begins;

d. Date reservation ends; and

e. Rate per day; and

(b) Email the Fiduciary Services Branch that a bed hold has been completed.

(3) If a ward is in a public assistance eligible facility such as a licensed personal care home or family care home, and moves to a temporary stay at a hospital, psychiatric hospital-state and private, or nursing facility, the ward may be entitled to retain the public assistance for three (3) months in accordance with 42 U.S.C. 1382(e)(1)(G) and 20 C.F.R. 416.212.

(4) In order to continue public assistance the following requirements shall be met:

(a) A bed hold has been approved;

(b) A physician certifies in writing within ten (10) calendar days of admission that the non Supplemental Security Income (SSI) recipient is unlikely to be confined for longer than ninety (90) full, consecutive days; and

(c) Fiduciary Services Branch provides the DCBS with the following:

1. Notification of the temporary admission; and

2. The physician statement as specified in paragraph (b) of this subsection.

(5) If the bed hold is not verified or a physician statement is not received within ten (10) calendar days, the ward shall lose eligibility for public assistance and all public assistance shall be returned by the Fiduciary Services Branch to the Kentucky State Treasury from the date of admission.

(6)(a) The Field Services Branch may only authorize a bed hold for a ward residing in other levels of care by verifying and documenting the availability of the ward's funds with the Fiduciary Services Branch.

(b) If funds are verified by the Fiduciary Services Branch, the Field Services Branch shall verify the verbal authorization of a bed hold as specified in subsection (2) of this section.

Section 15. Moving to a New Region. (1) If a ward is being considered for placement from one (1) service region to another, the sending region's Field Services Branch shall consult with the receiving service region's Field Services Branch to determine if the proposed placement meets the needs of the ward.

(2) If placement is appropriate, the Field Services Branch shall request that the receiving region's Field Services Branch visit and assess the ward within forty-five (45) calendar days of placement to ensure the ward is adjusting to the placement.

(3) Within seven (7) working days of the visit, the receiving region's Field Services Branch shall make a recommendation for case file transfer to the sending region as to the ward's adjustment to the placement.

(4) If the ward is not adjusting to placement in the receiving service region:

(a) The sending service region shall consult with the receiving service region for direction and possible resolution; and

(b) The receiving service region may revisit the ward to monitor the placement.

(5) If the ward is adjusting and placement is appropriate, the Field Services Branch shall request a transfer of the ward's case to the receiving region with the receiving region's approval.

(6) If the transfer of the case is considered appropriate, the Field Services Branch in the sending region shall:

(a) Review the ward's file;

(b) Ensure the annual report is current; and

(c) Forward the ward's records and notification of transfer date to the Field Services Branch of the receiving region.

(7) The Field Services Branch in the receiving region shall:

(a) Notify the court of new place of residence and transfer;

(b) Assign a Field Services Worker in the new region; and

(c) Ensure health insurance and Medicare Part D are in place and available.

(8) If any of the following apply, the ward shall not be transferred:

(a) Limited appointment that expires within the next sixty (60) days of transfer;

(b) Legal actions pending in the current service region including the sale of real or personal property;

(c) A relative or other interested party is petitioning to be appointed successor guardian or conservator;

(d) The ward is in a psychiatric hospital voluntarily or by commitment for a period of less than 360 days; or

(e) The ward has been approved for SCL funding and is awaiting a permanent placement.

(9) If the ward is still in an emergency appointment, the case shall not be transferred without the sending region's Field Services Branch reviewing the facts and making a determination if the transfer will be accepted by the court in the receiving service region.

Section 16. Personal Belongings. (1) If a ward is moved from one (1) facility to another, the Field Services Branch shall ensure that all personal belongings are safely moved with the ward within thirty (30) calendar days of the move.

(2) If a ward is moved from a facility to a psychiatric hospital and the ward's personal belongings cannot be moved with the ward, the Field Services Branch shall:

(a) Determine:

1. If the prior facility charges a fee for storage; and

2. Through completion of a budget with the Fiduciary Services Branch, the availability of the ward's funds to cover the expense; and

(b) 1. Store the belongings; or

2. Dispose of the belongings as specified in Section 6(10) of this administrative regulation.

Section 17. Physical Health Care Needs of a Ward. (1) The Field Services Branch may approve health care, treatment, or services of a ward as authorized by a court.

(2) The Field Services Branch may approve birth control measures for the ward and authorize intrusive measures such as insertion of intrauterine devices or birth control implants if:

(a) A medical opinion indicates that there is minimal risk for the ward; and

(b) The procedure is considered to be the least invasive and most appropriate method available.

(3)(a) The Field Services Branch may discuss with the ward or the ward's relative or other interested party the need for surgery or treatment if:

1. It is in the best interest of the ward; and
2. The ward's relative or other interested party has been involved with the ward's case.

(b) Discussion may include the possibility of the ward's relative or other interested party petitioning the court to be appointed as full guardian, guardian for personal affairs, or as limited guardian for medical affairs only.

(4) Unless emergency surgery or treatment is necessary to preserve the ward's life or to prevent serious impairment of the ward's physical health, the Field Services Branch shall seek, pursuant to KRS 387.660(3), the approval of a court for the:

- (a) Removal of a bodily organ;
- (b) Amputation of a limb; or
- (c) Abortion or sterilization.

(5) The Field Services Branch shall document the health care services provided in the ward's case record including:

- (a) Procedure to be performed;
- (b) Name of the physician performing the procedure;
- (c) Location where the procedure will be performed;
- (d) Reason the procedure is needed;
- (e) Less intrusive measures that have been tried, if applicable; and
- (f) Date the procedure is to be performed.

Section 18. Mental Health Care Needs of the Ward. (1) The Field Services Branch shall seek court approval for the following procedures:

- (a) Electro-Convulsive Therapy (ECT); or
- (b) Psychosurgery pursuant to KRS 387.660(3).

(2) The Field Services Branch may co-sign a provider's voluntary admission form if a ward is admitted to a mental health or intellectual disability facility and if the:

- (a) Ward voluntarily signs the provider's voluntary admission form;
- (b) Admitting physician deems the ward to be capable of voluntarily consenting to the treatment; and
- (c) Cabinet is authorized by the court to make medical decisions for the ward.

(3) If there is no other person willing to petition the court for the ward to be involuntarily admitted, and the ward meets criteria for involuntary admission to a mental health facility or intellectual disability facility, the Field Services Branch shall follow the procedures and may initiate the Administrative Office of the Court's Petition for Involuntary Hospitalization:

- (a) In accordance with KRS Chapters 202A and 202B; and
- (b) If the Field Service Branch determines it is in the best interest of the ward.

Section 19. Nonemergency Removal of a Bodily Organ, Amputation of a Limb, Sterilization or Abortion. (1)(a) Unless emergency surgery or treatment is necessary to preserve the ward's life or prevent serious impairment of the ward's physical health, the Field Services Branch shall seek the approval of the court for the nonemergency removal of a bodily organ and the nonemergency amputation of a limb, sterilization, or abortion pursuant to KRS 387.660(3).

- (b) The nonemergency removal of a bodily organ may include an organ such as the:
  1. Eye;
  2. Kidney;

3. Liver;
4. Lung; or
5. Reproductive organs.

(c) The nonemergency amputation of a limb may include:

1. Arm;
2. Foot;
3. Hand; or
4. Leg.

(2) The Field Services Branch may discuss with the ward, ward's relative or other interested party:

- (a) The disposition of an amputated limb; or
- (b) Keeping the amputated limb for burial in accordance with 910 KAR 2:030, Section 12(6).

(3) In order to obtain approval of the court, the Field Services Branch shall obtain written statements from two (2) physicians, who have evaluated the ward and who are not in practice together to include the following:

- (a) Ward's name;
- (b) Date when the statement was written;
- (c) Physician's name, area of practice, address, telephone number, and signature;
- (d) Date the physician last evaluated the ward's condition;
- (e) Procedure to be performed;
- (f) Person who will perform the procedure;
- (g) Location where the procedure will be performed;
- (h) Date of the procedure;
- (i) Ward's prognosis if the procedure is performed;
- (j) Ward's prognosis if the procedure is not performed;
- (k) Risks of performing the procedure;
- (l) Physician's professional opinion as to why the benefits of having the procedure outweighs the risks involved; and
- (m) Alternative and less intrusive procedures that have been performed.

(4) The Field Services Branch shall prepare a written request for legal assistance with the OLS in anticipation of a motion and order that includes the:

- (a) Ward's name;
- (b) Date of adjudication;
- (c) Date the cabinet was appointed;
- (d) Type of appointment and any limitations;
- (e) County having current jurisdiction over the case;
- (f) Court's case number;
- (g) Procedure to be performed;
- (h) Reason the procedure needs to be performed;
- (i) Person who will perform the procedure;
- (j) Location where the procedure will be performed;
- (k) Date of the procedure;
- (l) Reference to the two (2) physicians who support the need for the procedure, who have evaluated the ward and who are not in practice together;
- (m) Names, relationships, and mailing addresses of relatives to be notified of the court hearing; and
- (n) Disposition of the amputated limb, if applicable.

(5) The Field Services Branch shall forward to the OLS the following:

- (a) The request for legal assistance;

- (b) A copy of the district court's AOC-785, Disability Judgment;
- (c) A copy of the district court's AOC-775, Order of Appointment of Guardian; and
- (d) The two (2) physicians' statements.
- (6) If the motion and order have been received, the Field Services Branch shall file the following information with the court in the case:
  - (a) The motion and order prepared by OLS;
  - (b) The two (2) physicians' statements;
  - (c) An AOC-775, Order of Appointment of Guardian, available at the court of a ward's disability case; and
  - (d) An AOC-785, Disability Judgment, available at the court of a ward's disability case.
- (7) If required by the court, the Field Services Branch shall attend the hearing on the motion and order.
- (8) The Field Services Branch shall provide a certified copy of the signed order to the:
  - (a) Hospital where the surgery or treatment is to be performed; or
  - (b) Facility where the ward is residing so that the order can be sent with the ward to the hospital.
- (9) The Field Services Branch shall grant permission for the procedure that has been approved by the court.
- (10) The Field Services Branch shall arrange disposition of the amputated limb as specified in subsection (2)(a) of this section.
- (11) The Field Services Branch shall include an affidavit and other documentation of surgery in the next annual report to the court.

Section 20. Emergency Removal of a Bodily Organ, Amputation of a Limb, Sterilization, or Abortion. (1) If an emergency procedure needs to be performed within twenty-four (24) hours of notification of need from a physician to preserve the life or prevent serious impairment of the physical health of a ward, the Field Services Branch shall not seek court approval.

(2) The Field Services Branch shall notify the division of the need for an emergency procedure.

(3)(a) The Field Services Branch shall document the emergency need and time table for the procedure and request an affidavit of emergency need from the physician.

(b) The Field Services Branch may request a second opinion and an affidavit from the second physician to verify the need for surgery is an emergency.

(c) The Field Services Branch shall review the affidavit if the affidavit is received and authorized as an emergency procedure as appropriate.

(d) The Field Services Branch may discuss with the ward, ward's relative, or other interested party:

1. The disposition of an amputated limb; or
2. Keeping the amputated limb for burial in accordance with 910 KAR 2:030, Section 12(6).

(e) The Field Services Branch shall include the affidavit and other documentation to the event in the next annual report to the court.

Section 21. Involuntary Mental Health Treatment for Wards. (1)(a) If it is determined that a ward is in need of mental health hospitalization, the Field Services Branch shall suggest to the ward that he or she voluntarily seek treatment from a mental health professional or hospital.

(b) If the ward refuses to seek mental health services, and no other person is willing or able to file the petition, the Field Services Branch may:

1. Counsel community partners to petition; or
2. Initiate a petition for involuntary hospitalization if the ward meets the following criteria for

involuntary admission for mental health treatment:

- a. The ward has a mental health diagnosis;
- b. The ward can benefit from mental health treatment;
- c. The involuntary admission is the least restrictive form of treatment; and
- d. The ward presents a danger or threat of danger to self or others.

(2) If the cabinet is the petitioner, the Field Services Branch shall:

- (a) Attend the mental inquest hearing; and
- (b) Testify at the request of the county attorney.

Section 22. Involuntary Intellectual Disability Treatment for a Ward. (1) If it is determined that a ward is in need of intellectual disability treatment, the Field Services Branch shall suggest to the ward that he or she voluntarily seek treatment from an intellectual disabilities professional.

(2) If the ward refuses to seek intellectual disabilities treatment, and there is no other person willing or able to file the petition, the Field Services Branch may file a petition if the ward meets the following criteria for involuntary admission for intellectual disabilities treatment:

- (a) The ward has an intellectual disability diagnosis;
- (b) The involuntary admission is the least restrictive form of treatment; and
- (c) The ward presents a danger or threat of danger to self or others if not admitted to an intermediate care facility for intellectual disability (ICF/IID).

(3) In the case of an involuntary admission to an intellectual disabilities facility, the Field Services Branch shall:

- (a) Request approval from the Commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities for the ward's admission to the facility; and
- (b) Notify the Division of Protection and Advocacy.

(4) If the involuntary admission is granted, the Field Services Branch shall follow procedures as set out in KRS 387.660(1) for notification to the court.

(5) If the cabinet is the petitioner, the Field Services Branch shall:

- (a) Attend the mental inquest hearing; and
- (b) Testify at the request of the county attorney.

Section 23. Electro-convulsive Therapy and Psychosurgery. (1) Unless it is a necessary emergency medical procedure to preserve life or prevent serious impairment of the physical health of the ward, the Field Services Branch shall, for all forms of psychosurgery, seek approval from the court pursuant to KRS 387.660(3).

(2) The Field Services Branch shall inform the division of the requested procedure.

(3)(a) The Field Services Branch shall obtain written statements from two (2) psychiatrists who have evaluated the ward and who are not in practice together.

(b) The written statements shall include the following:

1. Ward's name;
2. Date when the statement was written;
3. Psychiatrist's name, area of practice, address, telephone number, and signature;
4. Last date the psychiatrist evaluated the ward's condition face-to-face;
5. Procedure to be performed;
6. Person who will perform the procedure;
7. Location where the procedure will be performed;
8. Date of the procedure;
9. Ward's prognosis if the procedure is performed;
10. Ward's prognosis if the procedure is not performed;

11. Risks of performing the procedure;
  12. Psychiatrist's professional opinion as to why the benefits of having the procedure outweigh the risks involved; and
  13. Alternative and less intrusive measures that have been performed.
- (4) The Field Services Branch shall prepare a written request for legal assistance to the OLS that includes the:
- (a) Ward's name;
  - (b) Date of adjudication;
  - (c) Date the cabinet was appointed;
  - (d) Type of appointment and any limitations;
  - (e) County having current jurisdiction over the case;
  - (f) Court's case number;
  - (g) Procedure to be performed;
  - (h) Reason the procedure needs to be performed;
  - (i) Person who will perform the procedure;
  - (j) Location where the procedure will be performed;
  - (k) Date of the procedure;
  - (l) Reference to the two (2) psychiatrists who support the need for the procedure; and
  - (m) Names, relationships, and mailing addresses of relatives to be notified of the hearing.
- (5) Upon the completion of the written request, the Field Services Branch shall send to OLS the following and request that OLS prepare a motion and order requesting the consent for treatment:
- (a) Request for legal assistance;
  - (b) A copy of the district court's AOC-785, Disability Judgment;
  - (c) A copy of the district court's AOC-775, Order of Appointment of Guardian; and
  - (d) Two (2) psychiatrists' statements.
- (6) Once the motion and order requesting the consent for treatment have been received by the guardianship local office, the Field Services Branch shall file the following information with the court in the case:
- (a) Motion and order prepared by OLS;
  - (b) Two (2) psychiatrists' statements;
  - (c) A copy of the district court's AOC-775, Order of Appointment of Guardian; and
  - (d) A copy of the district court's AOC-785, Disability Judgment.
- (7) If required by the court, the Field Services Branch shall attend the hearing on the motion and order.
- (8) The Field Services Branch shall provide a certified copy of the signed order by the court to the hospital where the procedure is to be performed or to the facility where the ward is residing so that the order can be sent with the ward to the hospital.
- (9) The Field Services Branch shall include the following in the next annual report to the court:
- (a) The requests for consent for treatment;
  - (b) Action taken by the court; and
  - (c) Treatment provided and resulting outcomes.

Section 24. Life Saving Measures. (1) The procedure for the Field Services Branch to request a change in code status from Full Code (FC) to Do Not Resuscitate (DNR) for a ward for whom the cabinet has the authority to make health care decisions shall include:

- (a) 1. Being advised by an attending physician, after clinical examination, that the ward:
  - a. Has a terminal condition;

- b. Is permanently unconscious; or
  - c. Has a comorbid condition, in which two (2) or more coexisting medical conditions compromise the ward's chance of recovery or of benefiting from active treatment; and
2. The physician's request that the ward's code status be changed to DNR;
- (b) Sending the DNR Request Form to be completed and signed by two (2) physicians, one (1) of whom shall be the attending physician; and
  - (c) Notifying and sending the signed DNR Request Form and diagnostic documentation or testing that documents the ward's condition is terminal or permanently unconscious to one (1) of the nurse consultants.
- (2) The nurse consultant shall determine if the ward meets criteria according to the cabinet's protocol or defer the request to change the ward's code status to DNR to the Guardianship Advisory Committee.
- (3) The nurse consultant shall notify the Field Services Branch of the determination that was made on the ward's code status.
- (4) Upon receiving the determination for DNR, in support of changing the ward's code status to DNR, the Field Services Branch shall complete a hospital's or Emergency Medical Services' (EMS) Kentucky Emergency Medical Services Do Not Resuscitate Order.
- (5) The Field Services Branch shall forward a copy of the approval and the DNR Order to all involved facilities.
- (6) The Field Services Branch shall notify all involved facilities verbally of the DNR Order.
- (7) If the ward's medical condition improves significantly, any party involved, including the Field Services Branch, may review and make a request to change the code status.

Section 25. Death of a Ward. (1) If a ward dies, the Field Services Branch shall contact the Fiduciary Services Branch within one (1) working day upon notification of the death and provide the:

- (a) Name of the ward;
  - (b) Date of death;
  - (c) Place of death;
  - (d) Last residence;
  - (e) Name, address, and telephone number of the funeral home; and
  - (f) Assets held by the field office or current placement.
- (2) The Field Services Branch may contact the preferred funeral home and inform them of:
- (a) The ward's death and location of the body;
  - (b) Any known relative or other interested party;
  - (c) Any known prepaid burial assets; and
  - (d) The fact that the cabinet shall not be held responsible for any burial arrangements or funeral expenses.
- (3) The Field Services Branch shall ensure that a relative or other interested party is notified of the ward's death and funeral home.
- (4) If there are no funds available for burial, the Field Services Branch shall attempt to contact a known relative or other interested party to determine their interest and ability to assist with burial expenses.
- (5) The Field Services Branch may also seek assistance from the county Fiscal Court or local funeral homes.
- (6) As the cabinet's decision-making authority ceases when the ward dies, the Field Services Branch shall not grant permission for:
- (a) Autopsies; or
  - (b) Organ or tissue donations.



- (7) If a ward dies in unusual or unknown circumstances, the Field Services Branch shall:
- (a) Make a referral to:
    - 1. APS; and
    - 2. County coroner, relative, or other interested party who may order an autopsy; and
  - (b) Complete and submit to the department a Notice of Adult Fatality.
- (8) If the Field Services Branch determines the ward's hard copy file is complete or no later than six (6) months from date of death, the file shall be forwarded by person or mail to the Fiduciary Services Branch.

Section 26. Cremations. (1) Pursuant to KRS 367.97524 and 40 KAR 2:150, a cremation authorization form shall be signed by an authorizing agent clearly stating the disposition of the cremated remains.

(2) Pursuant to KRS 367.97527, a ward may have established a prepaid cremation account prior to being determined to be disabled in order to specify how personal remains shall be handled.

(3) Other persons legally entitled to order the cremation and disposition of the adult's human remains shall be as listed in KRS 367.97501(1).

(4)(a) The Field Services Branch shall not sign a cremation authorization, or be allowed to establish a prepaid cremation account for a ward.

(b) If the ward funded a pre-paid cremation account prior to being adjudicated disabled, the ward's desire to be cremated shall be honored.

(c) If the ward has not signed a preneed authorization and there are no adult relatives who are willing to serve as the authorizing agent, the coroner may seek an order in district court authorizing the ward's cremation.

Section 27. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Initial Field Visit Report", 3/09;
- (b) "DNR Request Form", 3/09; and
- (c) "Notice of Adult Fatality", 3/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (35 Ky.R. 1978; 2290; eff. 5-1-2009; 40 Ky.R. 2361; 2801; 41 Ky.R. 48; eff. 8-1-2014.)